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NOV 18 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 OFFICE OF THE SECRETARY

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IN THE MATTER OF:

MM DOCKET NO. 93-87

RAYMOND W. CLANTON

LOREN F. SELZNICK

El Rio, California

DATE OF CONFERENCE: November 4, 1993

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of:

RAYMOND W. CLANTON

LOREN F. SELZNICK

MM Docket No. 93-87

For Construction Permit for a
New FM Station on Channel 279A in
El Rio, California

The above-entitled matter came on for prehearing
conference pursuant to Notice before Judge John M. Frysiak,
Administrative Law Judge, at 2000 L Street, N.W., Washington,
D.C., 20554, in Courtroom No. 4, on Thursday, November 4,
1993.

APPEARANCES:

On behalf of Loren Selznick:

ROBERT THOMPSON, Esquire
Pepper and Corazzini
1776 K Street, N. W., Suite 200
Washington, D. C. 20006

On behalf of Raymond W. Clanton:

JERROLD MILLER, Esquire
Miller & Miller, P. C.
P. O. Box 33003
Washington, D. C. 20033

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2				
3	<u>Opening Statements By:</u>			
4	Judge Frysiak			3
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6				
7				
8				
9	<u>E X H I B I T S</u>			
10		<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
11	<u>Clanton</u>			
12	Exhibit No. 1	4	13	
13				
14	<u>Selznick</u>			
15	Exhibit No. 1	14	15	
16	Exhibit No. 2	14		
17	Exhibit No. 3	14		
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25	Conference Began: 10:00 a.m. Conference Ended: 10:30 a.m.			

P R O C E E D I N G S

(10:00 a.m.)

JUDGE FRYSIK: Hearing's in session.

MR. MILLER: On behalf of Raymond W. Clanton,
Jerrold Miller of Miller & Miller, Your Honor.

MR. THOMPSON: Good morning, Your Honor. Robert
Thompson, Pepper and Corrazini, on behalf of Loren F.
Selznick.

JUDGE FRYSIK: Are there any preliminary matters to
discuss? No?

All right. We have a simplified procedure here
today, simply receiving the exhibits. We'll proceed in docket
order. Mr. Miller, will you present your exhibits?

MR. MILLER: Yes, Your Honor. I have one question.
In accordance with Your Honor's Order early in this proceed-
ing, we attached to our exhibit a copy of Mr. Clanton's Inte-
gration Statement. Does Your Honor -- it's, it's unclear,
however, whether Your Honor wants that as part of the eviden-
tiary record. It is somewhat duplicative of his exhibit. I'm
prepared to submit the Integration Statement as well as Mr.
Clanton's direct case signed testimony or I can just submit
the signed testimony and not the Integration Statement.

JUDGE FRYSIK: I'm really ambivalent about it. You
can always -- I can always take official notice of whatever
filings have been made by any given applicant. So, you -- if
you want, you can enter it as an exhibit, or if you'd like

1 otherwise you can ask for that I take official notice of it in
2 your proposal. I --

3 MR. MILLER: In, in, in that case, Your Honor, I'll,
4 I'll -- I have copies here and I'll just submit it as, as part
5 of Clanton Exhibit 1.

6 JUDGE FRYSIK: All right.

7 MR. MILLER: Let the record reflect that I'm handing
8 to the court reporter an original and one copy of what has
9 previously been changed as Clanton Exhibit 1. It consists of
10 a three-page statement with Mr. Clanton's certification under
11 penalty of perjury and signature dated October 4, 1993, on
12 page 4. And attached to it is a copy of his Integration
13 Statement with the stamp of the Commission Secretary, April
14 26, 1993, and it consists of five pages. And I ask that this
15 be marked for identification as Clanton Exhibit 1.

16 JUDGE FRYSIK: Yes, it may be so marked.

17 (Whereupon, the document referred to
18 as Clanton Exhibit No. 1 was marked
19 for identification.)

20 MR. MILLER: And I move its admission into evidence,
21 Your Honor.

22 JUDGE FRYSIK: All right. Are there any
23 objections?

24 MR. THOMPSON: Your Honor, we have only a few
25 objections this morning. On page 2 of Clanton Exhibit 1, we

1 would object and ask that Your Honor strike that portion of
2 the sentence on page 2 that claims credit for "fundraising
3 participation from 1987 to October 1992 at Read, Write, and
4 Spell, Inc., an organization designed -- "

5 JUDGE FRYSIK: Well --

6 MR. THOMPSON: " -- to assist individuals --"

7 JUDGE FRYSIK: Direct me to the line that you're
8 at.

9 MR. THOMPSON: It's the very top of page 2, Your
10 Honor.

11 JUDGE FRYSIK: All right.

12 MR. THOMPSON: It, it's somewhat a carryover from
13 the bottom of page 1. The bottom of page 1 of the exhibit
14 starts to list his civic involvement, and the very first item
15 it says, "includes counseling students and fundraising
16 participation..." and then it continues on to the end of that
17 sentence.

18 Our objection is, is one that we are unable to tell
19 from the exhibit that this organization which is not claimed
20 to be a El Rio -- or, if you'll look in the second paragraph
21 on this page, Your Honor, certain of these organizations,
22 which we will not object to, state either Ventura County --
23 and I'm willing, having looked at Mr. Clanton's proposed
24 contour map, not to dispute the fact, for example, that the
25 Ventura County Economic Development Association -- I'm going

1 to presume that that's in Ventura and I'm not going to be so
2 picky as to try -- but for something like Read, Write, and
3 Spell, it's a failure of proof. There's simply no indication
4 in the exhibit that that is an organization that's in Ventura
5 County.

6 Or, for example, Your Honor, I'll conclude by point-
7 ing out that even Port Hueneme, I'm not sure that I'm pro-
8 nouncing that correctly, it's in the second paragraph on page
9 2 about the middle of the page, I consulted the Clanton con-
10 tour map and I'm not going to challenge that because it ap-
11 pears to me that in good faith we should not argue that he
12 failed his burden of proof because it looks to us like Port
13 Hueneme is in the service area.

14 So, while we don't want to present a purely obstrep-
15 erous approach to the civic activities because when we can
16 tell from the exhibit when Mr. Miller has made it clear that
17 the organization is in Ventura County or is in El Rio or even
18 in another city within the service area, we have -- we, we do
19 not plan on objecting to it.

20 JUDGE FRYSIK: Well, see, the first part, you go
21 back to page 1 and the last two lines it reads, "Mr. Clanton's
22 civic involvement in El Rio and his proposed station's 1 mV/m
23 contour includes..." and it includes this Read and Write
24 organization to assist learning disorders. So, from that I
25 think it's a fair reading to say that whatever activity,

1 activity was done by that organization, at least part of it
2 was done in El Rio and in the service area that is a proposed
3 station.

4 MR. THOMPSON: That is a possible interpretation.
5 I'm not saying --

6 JUDGE FRYSIK: Well --

7 MR. THOMPSON: -- it's unreasonable. It seems to me
8 that the burden of proof in these cases being on the appli-
9 cant, and that's, that's --

10 JUDGE FRYSIK: So, I think --

11 MR. THOMPSON: Well --

12 JUDGE FRYSIK: -- I think what you're saying is --
13 you're saying, you're giving me an argument. I'm saying that
14 that line -- the entire sentence is admissible and you, you
15 may argue against the weight that I might attach to it.

16 MR. THOMPSON: All right. Let me just conclude,
17 because I do totally understand Your Honor's point and ac-
18 knowledge it, that an applicant is certainly free to make a
19 introductory general statement. But I've certainly been in
20 these cases for 15 years and I have witnessed numerous occa-
21 sions that a general statement -- the applicant has the fol-
22 lowing civic activities within its service contour -- and
23 hearing after hearing it turns out, not through any bad faith,
24 but the applicant just made a mistake. And, therefore, it
25 seems to me incumbent upon an applicant that bears the burden

1 to state that something that's general like that -- to, to
2 name a, to name a city. And when I called, for example, area
3 code 805 and asked for Read, Write, and Spell, Incorporated,
4 there was no listing in Ventura County for that organization.

5 JUDGE FRYSIK: Still, I'm -- my, my own interpre-
6 tation, it's, it's more than an interpretation, it's a fair
7 reading of the, the statement stands. So, I will overrule
8 your objection. However, I'll give you the latitude that if
9 you can point to anything in your deposition of Mr. Clanton
10 that would cast a shadow on the quality of this claim, well,
11 then I'll consider it in your proposed findings. Any other
12 objections?

13 MR. THOMPSON: Thank you very much, Your Honor. No,
14 I, I, I understand that ruling completely. Let me then make
15 the same argument and, in anticipation of Your Honor's ruling,
16 let me say that we would object then -- and I'll try to be
17 complete and make this subject to one simple ruling, that we
18 would also argue that there is no specific indication that the
19 activity was in the service area with respect to the Wine and
20 Cheese Festival, March 1987, to the Santa Monica Mountains
21 Conservancy Celebration in March of 1987, the Knights of
22 Columbus Public Safety Night, April 1987, the Southern
23 California Edison Open House, May 1987, and Human Service
24 Center Groundbreaking, July 1987, the Proctor and Gamble 150th
25 Anniversary Celebration, September 1987, and because it ap-

1 | pears to us that the activity may fall out of the service
2 | area, we are also objecting to the Oak Park Recycling Program
3 | Kickoff Ceremony, Your Honor, March 1990. Those are the
4 | activities that appear to us not proved by the applicant --

5 | JUDGE FRYSIK: Sure.

6 | MR. THOMPSON: -- to be within the service area.

7 | JUDGE FRYSIK: Well, my ruling's going to be the
8 | same simply because the entire paragraph is preambled by the
9 | sentence that Mr. Clanton has participated in numerous com-
10 | munity functions within his proposed 1 mV/m contour. So, what
11 | follows is an amplification of that statement. If you have
12 | proof to the contrary, I'd hear it. Okay? So, I will over-
13 | rule your objection.

14 | MR. THOMPSON: Thank you, Your Honor. The, the
15 | other objection we would have is to the -- page 3, where we've
16 | now taken us up to -- is to the so-called broadcast experi-
17 | ence. We cannot find any proof in Commission case law, and
18 | this morning I consulted again the Policy Statement, and the
19 | fact that someone has been a commercial production volunteer,
20 | appears on its face to be noncompensated activity, and we
21 | would in fact ask that all five of those volunteer items on
22 | page 3 of Clanton Exhibit 1 be stricken from the record.

23 | JUDGE FRYSIK: Do you have any response?

24 | MR. MILLER: Yes, Your Honor. I'm not aware of any
25 | case which has held that broadcast experience of a volunteer

1 rather than a paid nature is not acceptable. Certainly, I
2 believe, although I, I don't have a case to cite Your Honor,
3 credit has been given for work at a college station while the,
4 the student was in college, which would, would indicate a, a
5 volunteer, a nonpaid position. The purpose for credit for
6 broadcast experience is to demonstrate that the applicant has
7 gained familiarity with the operation of broadcast stations so
8 he doesn't come in totally green to the station when he puts
9 it on the air, that he, he's been there and he under-- has the
10 knowledge of the workings and day-to-day operations of a
11 broadcast station. And whether you're paid for it or not paid
12 for it to me makes no difference.

13 Mr. Thompson's argument to me is a, is a weight
14 argument and not an admissibility argument. And if he claims
15 that the, the weight to be given should be diminished and he
16 has cases to justify that, that's an argument for findings,
17 Your Honor.

18 JUDGE FRYSIK: But by what token would he diminish
19 it?

20 MR. MILLER: Well, he would say that because it's,
21 it's nonpaid the, the enhancement for broadcast experience
22 should be reduced if he has cases which hold that. I -- he
23 hasn't cited one case to me where the Commission has denied
24 broadcast experience credit because the experience was unpaid.

25 MR. THOMPSON: Your Honor, the reason just -- I'll

1 make it a very short -- there only seems to be two reasons why
2 we can't do it. It's, first, back to the burden of proof.
3 I'm not saying that there might not be the case where if the
4 applicant in its direct case testimony makes it clear that it
5 was for a sustained daily period of time -- Was it once a
6 week? Was it once a month? Was it two visits during that
7 time period? You see, the reason -- and this second way is
8 directly into my second point. The reason that the Commission
9 has given credit over the years for broadcast experience to
10 employees is because there's an inference. There is an infer-
11 ence that is you were a full-time student who is working at
12 the college station, that's a part of your curriculum. It's
13 not really volunteer. It's part of your college curriculum
14 and there is an element of coercion the same way if you are
15 employed. There is an element and an inference that it's an
16 ongoing, continuous, meaningful association with the station.
17 This evidence is simply too vague. We don't know is the
18 answer.

19 JUDGE FRYSIAK: Well, it's not always part of a
20 curriculum. My -- you know, it's a volunteer thing at a
21 college. We have dates here. You have a period of time
22 that's assigned. I think -- and I think I have to agree with
23 Mr. Miller that your objection goes to the weight rather than
24 to it, its admissibility. Because even if a minimal time was
25 spent, some knowledge was gained. Now, whether it's credit-

1 able, why, that's something that we can argue about in your
2 proposed findings. All right. I'll overrule your objection
3 on the broadcast experience. And any --

4 MR. THOMPSON: Thank you, Your Honor.

5 JUDGE FRYSIK: -- any other --

6 MR. THOMPSON: Our final objection is to the para-
7 graph that follows. The paragraph, if I could read it very
8 briefly in its entirety, says, "For approximately a nine month
9 period between 1984 and --"

10 JUDGE FRYSIK: You're on page 4?

11 MR. THOMPSON: No, on page 3, Your Honor. It's
12 following --

13 JUDGE FRYSIK: Oh, I see. I --

14 MR. THOMPSON: -- the --

15 JUDGE FRYSIK: -- I got you.

16 MR. THOMPSON: -- indented material.

17 JUDGE FRYSIK: All right.

18 MR. THOMPSON: "...period between 1984 and 1985.

19 Mr. Clanton was technically and artistically involved in
20 developing and producing a television pilot film for broadcast
21 on Cable Channel 6 in Oxnard, California." Same argument. I
22 would say that that's not admissible.

23 JUDGE FRYSIK: I think you're going to have to make
24 that argument in the, in the proposed findings. I think
25 credit has to be given for producing shows, programming out-

1 side of a radio station. So, if that's the case, why, it can
2 be argued that this is relevant information on the part of the
3 applicant. So, you will have to explore that in your proposed
4 findings.

5 MR. THOMPSON: Very well, Your Honor. We then --

6 JUDGE FRYSIK: With that, I will overrule your
7 objection.

8 MR. THOMPSON: Thank you, Your Honor. And, with
9 that, Ms. Selznick has --

10 JUDGE FRYSIK: All right.

11 MR. THOMPSON: -- concluded --

12 JUDGE FRYSIK: And I will receive Clanton
13 Exhibit 1.

14 (Whereupon, the document marked for
15 identification as Clanton Exhibit
16 No. 1 was received into evidence.)

17 MR. MILLER: That concludes Mr. Clanton's direct
18 case, Your Honor.

19 JUDGE FRYSIK: All right. Thank you very much.
20 All right. Applicant Selznick, Mr. Thompson?

21 MR. THOMPSON: Thank you, Your Honor, very much.
22 Ms. Selznick has provided the reporter with two copies of the
23 Direct Written Case of Loren F. Selznick. There are three
24 exhibits. Exhibit 1 is an Ownership of the Applicant.
25 Exhibit No. 2 is the Integration Proposal of the applicant.

1 And Exhibit No. 3 is the Diversification Status of the
2 Applicant.

3 JUDGE FRYSIAK: All right. They may all be marked.
4 (Whereupon, the documents referred to
5 as Selznick Exhibit Nos. 1, 2, and 3
6 were marked for identification.)

7 MR. THOMPSON: Thank you, Your Honor. I move at
8 this point the receipt of Exhibit No. 1.

9 JUDGE FRYSIAK: Any objections?

10 MR. MILLER: Your Honor, I have just a, a comment,
11 and it can be framed in, in terms of an objection, to the
12 failure of Ms. Selznick to comply with Your Honor's order that
13 a copy of Ms. Selznick's Integration Statement accompany the
14 exchange of the direct case. And not only did Your Honor make
15 that order, but when Mr. Thompson submitted a suggestion
16 request to revise dates, his own pleading indicated that the
17 standardized Integration Statement should accompany the sub-
18 mission of the, the exchange of the direct case. Selznick did
19 not exchange the standardized Integration Statement at that
20 time. I have it before -- I'm not claiming prejudice in any
21 way and I don't find it particularly --

22 JUDGE FRYSIAK: Well, maybe we can stop --

23 MR. MILLER: -- im-- unconscionable, but, but Your
24 Honor, it did make --

25 JUDGE FRYSIAK: I wasn't -- of an Integration

1 Statement?

2 MR. THOMPSON: No. We would be glad, Your Honor, to
3 supplement --

4 JUDGE FRYSIAK: All right. So, you'll --

5 MR. THOMPSON: -- both --

6 JUDGE FRYSIAK: -- supply it as your Exhibit 4.

7 Okay?

8 MR. THOMPSON: I certainly will, Your Honor.

9 MR. MILLER: I have, I have no objection to Selznick
10 Exhibit 1, Your Honor.

11 JUDGE FRYSIAK: All right. I'll receive Exhibit 1.
12 (Whereupon, the document marked for
13 identification as Selznick Exhibit
14 No. 1 was received into evidence.)

15 JUDGE FRYSIAK: How about 2?

16 MR. MILLER: I have one objection on 2, Your Honor.
17 On the second page, item 2, the claim for a female enhancement
18 credit, that has been ruled unconstitutional. The Commission
19 does not give female enhancement credit. Therefore, the item
20 is irrelevant and should be stricken.

21 MR. THOMPSON: Our, our position -- just before your
22 ruling, if I could, because I, I greatly anticipate your
23 ruling, Ms. Selznick position is a, a, a technical one here.
24 She understands the D. C. Circuit's opinion. The D. C.
25 Circuit's opinion was not, however, appealed to the Supreme

1 Court nor was cert denied from the Circuit. Consequently, Ms.
2 Selznick is claiming female enhancement credit. She fully
3 understands that you are bound by the Circuit's ruling.
4 However, to preserve her argument for the future, including
5 the possibility of raising this at the Supreme Court, she is
6 claiming it in her exhibits, and that's the reason that it's
7 here.

8 She does not believe it's unconstitutional. She
9 believes the Circuit decision was wrong and she would like an
10 opportunity to argue that. And if she doesn't --

11 JUDGE FRYSIK: Well --

12 MR. THOMPSON: -- represent it here, she can't.

13 JUDGE FRYSIK: Of course, it's argument over
14 nothing. I mean, it's a de minimis situation. She -- cer-
15 tainly her gender is never going to be denied. And if in the
16 future the thing is established that females were entitled to
17 a credit right along, well, then it can be revisited.

18 MR. THOMPSON: But if she doesn't claim it here, she
19 will have no legal basis to argue --

20 JUDGE FRYSIK: But she did claim it in the -- her
21 Integration Statement and that, and she's entitled to it as a
22 matter of right. Not so much as a matter of claim, but as a
23 matter of right. So, I think you're being overly protective.
24 In any event, I will, I will not grant the motion to strike
25 because it's, it's really of no consequence. No credit can be

1 given because the Commission's policy at the present time is
2 no one has a credit for female gender.

3 All right. Any other objections?

4 MR. MILLER: No objection, Your Honor.

5 JUDGE FRYSIK: And No. 3?

6 MR. MILLER: No objection.

7 JUDGE FRYSIK: All right. All right. Mr.
8 Thompson, I have reserved Exhibit 4 for you.

9 MR. THOMPSON: Thank you, Your Honor. We will --

10 JUDGE FRYSIK: Which will be the Integration
11 Statement. And you will supply Mr. Miller with it and the
12 Court, okay?

13 MR. THOMPSON: I will indeed, Your Honor, as well as
14 the Bureau.

15 JUDGE FRYSIK: Are there any other matters for you
16 to --

17 MR. THOMPSON: Only a, a posthearing question that
18 we don't have to be on the record about. That can wait --

19 JUDGE FRYSIK: All right. So, that concludes
20 your --

21 MR. THOMPSON: Yes.

22 MR. MILLER: Your Honor, I have one question. If
23 Mr. Thompson is going to introduce any evidence regarding the
24 service area or lack of service area connection to these civic
25 activities of Mr. Clanton, could I request that he do it in

1 the form of a rebuttal exhibit so that the material will be
2 available for findings and so forth?

3 MR. THOMPSON: But, Your Honor, to do so would mean
4 we would have to convene again. I mean, if Mr. Miller --
5 first of all, if we do submit such evidence, and we may, but I
6 can represent to you today that no decision's been made on
7 that. If my coun-- if my client asks me and we agree to, then
8 he'll have an opportunity in his reply finding to submit or
9 rebut anything we say in our proposed findings.

10 JUDGE FRYSIK: What kind of an exhibit --

11 MR. THOMPSON: I don't see why we have to --

12 JUDGE FRYSIK: -- would you give? I mean, how
13 would you determine that any of these activities were not
14 performed by virtue of a map?

15 MR. THOMPSON: Well, Mr. -- I think what we would
16 argue is we would, we would try to show that, that the activ-
17 ity was outside of his 1 millivolt contour because, for exam-
18 ple, if he names a place that's outside, we would then, we
19 would then --

20 JUDGE FRYSIK: But -- simply because --

21 MR. THOMPSON: --

22 JUDGE FRYSIK: -- an organization may have --

23 MR. THOMPSON: From some legal --

24 JUDGE FRYSIK: -- a locus outside the service area
25 does not mean it did not produce work within the service area.

1 I mean, you've got border, borderline situations. I mean, I
2 think it would be overly optimistic on your part to think that
3 you could defeat the claim simply by showing that a organiza-
4 tion was in fact outside -- had a locus outside the -- head-
5 quarters outside the service area, because a map can't show
6 you what work that was done inside the --

7 MR. THOMPSON: But it might raise a question in your
8 mind, Your Honor, as you're sitting with your initial deci-
9 sion. It might raise a question as to whether the burden of
10 proof had been satisfied by the applicant. In other words, if
11 you have a serious question about the matter, you might
12 decide: I don't know who's right here, but clearly the appli-
13 cant hasn't proven it to me, so I have to deny credit. That
14 could be a potential outcome.

15 JUDGE FRYSIK: I don't intend to speculate, Mr.
16 Thompson. Usually when I view evidence I take it for what
17 it's worth, unless it's rebutted. So we'll leave that to the
18 future. I will close the record except for this contingent
19 situation about addressing -- but you will, I think, do in
20 proposed findings and --

21 MR. THOMPSON: You've, you've so ruled, Your Honor,
22 and I --

23 MR. MILLER: Your Honor, we have a second session
24 scheduled in December.

25 JUDGE FRYSIK: All right. I will close the record

1 on the comparative aspects of the case, okay, except for
2 receiving the --

3 MR. THOMPSON: Exhibit 4.

4 JUDGE FRYSIK: -- Integration Statement of Ms.
5 Selznick. We do need in the future, and I understand now that
6 there is some motion, I don't know whether you, you've been
7 served, but a Motion to Suppress -- quash a subpoena.

8 MR. MILLER: I have, Your Honor, my -- I did not
9 intend to respond formally to it. My feeling is that's in the
10 nature of a Request for Reconsideration, which is improper.
11 And the subpoena has been signed by Your Honor. And I don't
12 know if it's been served or it's, it's been sent out for
13 service, and it -- I just didn't feel that there was any, any
14 need to further respond at this point.

15 MR. THOMPSON: Well, it's certainly not reconsider-
16 ation, because the Judge issued a subpoena. And before he
17 issued it, there was no subpoena. So, you can't move to
18 quash --

19 JUDGE FRYSIK: Well, he's --

20 MR. THOMPSON: -- when it's --

21 JUDGE FRYSIK: -- referring to my order of -- where
22 I directed Mr. Daily to appear on the 15th of November.

23 MR. THOMPSON: Right.

24 JUDGE FRYSIK: You might recall that Mr. Daily
25 wrote me a letter, which I consider not authorized. But, even

1 so, I considered his, his opin-- his, his excuses and I indi-
2 cated that it was not substantial enough. He, for one, being
3 an attorney and an officer of the court, ought to be more
4 aware of the need to appear via depositions and at Court
5 hearings. So, that to simply say that he's got a tight sched-
6 ule was, was insufficient. It was unacceptable.

7 MR. THOMPSON: Well --

8 JUDGE FRYSIK: So, therefore, I anticipated in the
9 future modifications of it and simply directed him to appear
10 on the 15th. Now, he's going to have to give me a substantial
11 reason. In the motion to quash, Ms. Selznick says that she
12 has no control over Mr. Daily and he will not appear. Well,
13 if that is the case, my pro-- quandary is is that I have a
14 misrepresentation issue. I can easily dismiss, you know, the
15 claim of qua-- financial qualification, but the misrepresenta-
16 tion issue is, you know, is, is a bit heavy to say, well, a
17 witness didn't show up so that's too bad when there is a
18 forfeiture involved and, you know, and things of that nature.

19 MR. THOMPSON: And that's our quandary too, Your
20 Honor.

21 JUDGE FRYSIK: Yeah. So, I'm just sorry that you
22 people reached an impasse here that you can resolve. I can
23 tell you what, I'm amenable to, to grant some latitude here to
24 Mr. Daily provided that it's agreeable with you, Mr. Miller,
25 as far as the date is concerned. And I'm also going to post-

1 | pone the hearing until a date suitable to you, Mr. Miller, and
2 | to Mr. Daily and Ms. Selznick and Mr. Thompson.

3 | MR. THOMPSON: It's extremely fair on your part,
4 | Your Honor.

5 | JUDGE FRYSIAK: All right. So, that no one will be
6 | prejudiced into preparation of the case in appearing for the
7 | different sessions that are required, deposition and hearing.
8 | All right? Fair enough. I -- that's the only Solomon deci-
9 | sion I can make here. I'm not going to prejudice anybody
10 | because there is a misrepresentation issue which has -- if
11 | pr-- sustained, why, has implications for, forever, I guess.

12 | MR. MILLER: Well -- so, I understand -- what --
13 | Your Honor will be rescheduling the, the hearing on the finan-
14 | cial issues?

15 | JUDGE FRYSIAK: Well, I want you to discuss all of
16 | this and come back with me with the dates, days for which Mr.
17 | Daily will be deposed by you, Mr. Miller, and then dates upon
18 | which -- on which all parties will show up for a hearing. All
19 | right?

20 | MR. THOMPSON: We can certainly do that, Your Honor.

21 | JUDGE FRYSIAK: So, I'm, I'm giving you a lot of
22 | latitude. I mean, I'm not expecting you to -- another week
23 | beyond what we have originally scheduled for December the 6th.
24 | Whatever date comes up, comes up. I'm free in the month of
25 | December. Okay?

1 MR. THOMPSON: Thank you, Your Honor.

2 JUDGE FRYSIK: All right.

3 MR. THOMPSON: What about the month of January, Your
4 Honor, simply because I --

5 JUDGE FRYSIK: I have a hearing scheduled. But you
6 would have to take -- you would have to call me.

7 MR. THOMPSON: Would you have any objections if we
8 checked with your legal tech today while we're here --

9 JUDGE FRYSIK: No.

10 MR. THOMPSON: -- as to what your schedule is?

11 JUDGE FRYSIK: Oh, fine. Fine. Right. If you can
12 resolve it today, I'd be very happy. I would also be very
13 happy if we could have this done in December rather than in
14 January because there is a certain onus on me to expedite
15 cases. You know we have to proceed by way of production
16 reports and whatever.

17 MR. THOMPSON: I --

18 JUDGE FRYSIK: Although, I -- you know, this mat-
19 ter, it takes precedence over that. I can appreciate misrep-
20 resentation issues don't come up every day. Okay?

21 MR. MILLER: Thank you, Your Honor.

22 MR. THOMPSON: Thank you, Your Honor.

23 JUDGE FRYSIK: All right. We stand adjourned then.
24 Thank you very much.

25 (Whereupon, the hearing adjourned at 10:30 a.m. on

1 November 4, 1993.)

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